

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x	
MANSEL OIL LIMITED,	:
	:
Plaintiff,	:
	:
- against -	:
	:
SWIFT AVIATION GROUP, INC.,	:
	:
Defendant.	:
----- x	

**ECF CASE**  
08 Civ. 1086 (GBD)  
Electronically Filed  
**DECLARATION OF JEFF A. SHUMWAY**

STATE OF ARIZONA                    )  
  ) ss.:  
COUNTY OF MARICOPA            )

JEFF A. SHUMWAY, being duly sworn, deposes and says:

1. I am the Chief Financial Officer of Swift Aviation Group, Inc. ("Swift Aviation Group"), the Defendant in the above captioned action. Swift Air, LLC ("Swift Air") is a wholly owned subsidiary of Swift Aviation Group and is the intervenor on this motion. I have personal knowledge of the facts and circumstances set forth in this Declaration. I submit this Declaration in support of Swift Air's Motion to Vacate the Maritime Order of Attachment.

2. Swift Aviation Group and Plaintiff Mansel Oil Limited ("Mansel Oil") have a dispute concerning certain charter party agreements, namely, a charter party dated August 23, 2007 ("the Term Sofia Charter") and another charter party agreement dated June 11, 2007 ("the Overseas Limar Charter"). Mansel Oil contends that Swift Aviation Group is in breach of the Term Sofia Charter and the Overseas Limar Charter due to an alleged failure to pay certain

freight and demurrage charges under the Torm Sofia Charter and Overseas Limar Charter. Swift Aviation Group denies these contentions.

3. The dispute between Mansel Oil and Swift Aviation Group is to be resolved through maritime arbitration in London and English law governs. On March 26, 2008, Mansel Oil commenced the maritime arbitration against Swift Aviation Group in London. A copy of Mansel Oil's notice of commencement of maritime arbitration is attached hereto as Exhibit A.

4. On February 5, 2008, Mansel Oil obtained an order from this Court that a Process of Maritime Attachment and Garnishment issue pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims an attachment order "against all tangible or intangible property belonging to, claimed by, or being held for the Defendant by any garnishees within this District, including but not limited to electronic funds transfers originated by, payable to, or otherwise for the benefit of Defendant."

5. On February 15, 2008, Plaintiff in this case attached an electronic funds transfer ("EFT") in the amount of US \$118,136.00 from Elite Jet, Ltd. ("Elite"), a Canadian entity, to Swift Air. These funds were restrained by Bank of America. Swift Aviation Group has no interest in the attached funds, which belong exclusively to its subsidiary Swift Air, a separate corporation which operates an air transportation charter business.

6. Swift Aviation Group is organized under and pursuant to the laws of the State of Arizona, with its principal place of business located at 2710 E. Old Tower Road, Phoenix, Arizona, 85034. A copy of Swift Aviation Group's Articles of Incorporation is attached hereto as Exhibit B.

7. Swift Aviation Group is a holding company that has an interest in different subsidiaries, including Swift Air. Although Swift Aviation Group is the parent corporation of

Swift Air, the two corporations are separately incorporated and organized and they operate independently of each other. Swift Air maintains a separate place of business from Swift Aviation Group and is headquartered at 2406 S. 24<sup>th</sup> Street, Phoenix, Arizona 85034.

8. Both Swift Aviation Group and Swift Air are fully capitalized.

9. Swift Aviation Group has its own Board of Directors and personnel.

10. Swift Aviation Group does not interfere in the business operations of Swift Air, nor is its business interfered with by Swift Air.

11. The term "Swift Aviation Group" is a federally registered service mark. Its use by Swift Aviation Group and its subsidiaries is not meant in any way to refer to the corporation, Swift Aviation Group.


12. As noted earlier, the Process of Maritime Attachment and Garnishment against Swift Aviation Group was issued in connection with the dispute under the charter party agreements Torm Sofia Charter and Overseas Limar Charter between Swift Aviation Group and Mansel Oil. The impugned charter party agreements are between Swift Aviation Group and Mansel Oil alone. Swift Air is not a party to the Torm Sofia Charter and the Overseas Limar Charter. Nor is it otherwise involved with the dealings between Swift Aviation Group and Mansel Oil.

13. However, because Elite included Swift Aviation Group's name on the EFT's wire between Bank of America, and Swift Air's bank account at National City Bank in Michigan, Plaintiff was able to attach the funds of Swift Air pursuant to the Process of Maritime Attachment and Garnishment that was issued against Swift Aviation Group.

14. Swift Aviation Group is not a party to the aircraft charter agreement between Elite and Swift Air. Further, this agreement has no relation to the separate maritime charter party

agreements Torm Sofia Charter and Overseas Limar Charter between Swift Aviation Group and Mansel Oil. Swift Aviation Group has no rights in Swift Air's account with National City Bank. Thus, there is no basis for the aforementioned funds to have been attached.

Dated: Phoenix, Arizona  
April 1, 2008

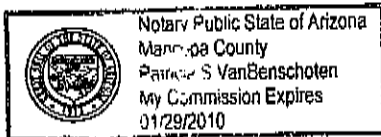


Jeff Shumway  
Chief Financial Officer,  
Swift Aviation Group

Sworn to before me this  
1 day of April, 2008

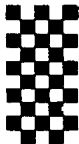


Patricia S. VanBenschoten



My Comm. Expires:

## **EXHIBIT A**



One, St Paul's Churchyard  
London EC4M 8SH  
Telephone +44 (0)20 7329 4422  
Fax +44 (0)20 7329 7100  
DX No. 64 Chancery Lane  
www.shlegal.com



**STEPHENSON HARWOOD**

**FAX**

To Swift Aviation Group  
Attn: J Kevin Burdette

At fax number 001 602 264 5006

Skadden, Arps, Slate, Meagher &  
Flom LLP  
Attn: John L Gardiner / Julie Bédard

001 212 735 2000

From Rovine Chandrasekera  
Direct fax 020 7003 8507

Our ref 979/45-03151

Pages (inc) 1

Date 26 March 2008

Dear Sirs

**MV "OVERSEAS LIMAR" - charterparty dated 11 July 2007 between Mansel Oil Limited and Swift Aviation Group Inc ("Swift"), (the "Charterparty")**

We refer to recent correspondence and our letter of 16 January. Unfortunately Swift have failed to pay sums due under the Charterparty.

Therefore pursuant to clause 10 of the additional clauses to the Charterparty, our client hereby elects to resolve the current dispute by arbitration in London according to English law.

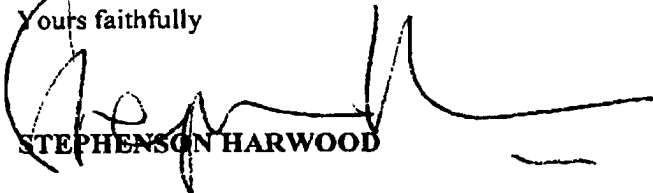
We hereby formally notify you that our clients have commenced arbitration proceedings against your clients by appointing Mr Michael Baker-Harber (details below) as their arbitrator. As per the Charterparty, we now call on Swift to appoint their arbitrator and notify us of that appointment within 14 days.

Mr Baker-Harber's details are as follows:

14 Cheyne Gardens  
London  
SW3 5QT

Tel: 020 7351 1328  
Fax: 020 7351 1623  
Email: mbh@mbharb.fsnet.co.uk

Yours faithfully

  
**STEPHENSON HARWOOD**

**CONFIDENTIALITY NOTICE**

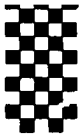
The information contained in this transmission is confidential. It may also be legally privileged. It is intended only for the addressee(s) stated above. If you are not an addressee you should not disclose, copy, circulate or in any other way use the information contained in this transmission. Such unauthorised use may be unlawful. If you have received this transmission in error, please telephone us immediately so that we can arrange for its return.

**PAGE 1**

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The partners in the firm are solicitors or registered foreign lawyers.

\\LONLIVE6518949.1 A list of names of the partners and their professional qualifications is open for inspection at the above address.



One, St Paul's Churchyard  
London EC4M 8SH  
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www.shlegal.com



**STEPHENSON HARWOOD**

**FAX**

To Swift Aviation Group  
Attn: J Kevin Burdette

At fax number 001 602 264 5006

Skadden, Arps, Slate, Meagher &  
Flom LLP  
Attn: John L Gardiner / Julie Bédard

001 212 735 2000

From Rovine Chandrasekera  
Direct fax 020 7003 8507

Our ref 979/46-02883

Pages (inc) 1

Date 26 March 2008

Dear Sirs

**MT "TORM SOFIA"– charterparty dated 23 August 2007 between Mansel Oil Limited and Swift Aviation Group Inc ("Swift"), (the "Charterparty")**

We refer to recent correspondence and our letter of 16 January. Unfortunately Swift have failed to pay sums due under the Charterparty.

Therefore pursuant to clause 10 of the additional clauses to the Charterparty, our client hereby elects to resolve the current dispute by arbitration in London according to English law.

We hereby formally notify you that our clients have commenced arbitration proceedings against your clients by appointing Mr Michael Baker-Harber (details below) as their arbitrator. As per the Charterparty, we now call on Swift to appoint their arbitrator and notify us of that appointment within 14 days.

Mr Baker-Harber's details are as follows:

14 Cheyne Gardens  
London  
SW3 5QT

Tel: 020 7351 1328  
Fax: 020 7351 1623  
Email: mbh@mbharb.fsnet.co.uk

Yours faithfully

  
**STEPHENSON HARWOOD**

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\\ONLIVE\6518810.1 A list of names of the partners and their professional qualifications is open for inspection at the above address.

## **EXHIBIT B**



PHX-08-2004 14:55

P.02/08

**COMMISSIONERS**  
MARC SPITZER - Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES



**ARIZONA CORPORATION COMMISSION**

**BRIAN C. MCNEIL**  
Executive Secretary  
  
**JOANNE C. MACDONNELL**  
Director, Corporations Division

March 8, 2004

KATHY J SHELBY  
LANE & EHRlich LTD  
4001 N 3RD ST STE 400  
PHOENIX, AZ 85012

RE: SWIFT AVIATION GROUP, INC.  
File Number: -1121306-9

We are pleased to notify you that your Articles of Incorporation were filed on February 24, 2004.

You must publish a copy of your Articles of Incorporation. The publication must be in a newspaper of general circulation in the county of the known place of business in Arizona (as filed with the Commission) for three (3) consecutive publications. A list of newspapers is available on the Commission web site. An affidavit from the newspaper, evidencing such publication, must be delivered to the Commission for filing within NINETY (90) DAYS from the date of this letter. Make sure the newspaper publishes the corporation documents using the exact name filed with the Commission.

All corporations transacting business in Arizona are required to file an Annual Report with the Commission, on the anniversary of the date of incorporation. Each year, a preprinted Annual Report form will be mailed to the corporation's known place of business approximately two months prior to the due date of the report. Should the report fail to arrive, contact the Commission. It is imperative that corporations notify the Commission immediately (in writing) if they change their corporate address, statutory agent or agent address. Address change orders must be executed (signed) by a corporate officer. Postal forwarding orders are not sufficient.

The Commission strongly recommends that you periodically check Commission records regarding the corporation. The Commission web site [www.cc.state.az.us/corp](http://www.cc.state.az.us/corp) contains information specific to each corporation of record and is a good general source of information.

If you have any questions or need further information, please contact us at (602) 542-3135 in Phoenix, (520) 628-6560 in Tucson, or Toll Free (Arizona residents only) at 1-800-345-5819.

Sincerely,  
THERESA TITTLE  
Examiner  
Corporations Division

CF:04, Rev:01/2004

AZ. CORP. COMMISSION  
FILED

FEB 24 2004

ARTICLES OF INCORPORATION

OF

SWIFT AVIATION GROUP, INC.

APPR.  
TERM  
DATE

*Sei Little*

*2/24/2004*

*1121306-9*

The undersigned incorporator, desiring to form a corporation under the laws of the State of Arizona, adopts the following Articles of Incorporation.

ARTICLE I

The name of the corporation shall be:

SWIFT AVIATION GROUP, INC. *OKMB*

ARTICLE II

The incorporator of the corporation is:

Gerald F. Ehrlich  
4001 N. 3<sup>rd</sup> Street, Suite 400  
Phoenix, AZ 85012

All powers, duties and responsibilities of the incorporator shall cease at the time of delivery of these Articles of Incorporation to the Arizona Corporation Commission for filing.

ARTICLE III

The corporation initially intends to conduct the business of overseeing the operations of its subsidiaries and to do all and everything advantageous and necessary to engage in said business.

ARTICLE IV

The purpose for which this corporation is organized is the transaction of any or all lawful business for which corporations may be incorporated under the laws of the State of Arizona as they may be amended from time to time.

#### ARTICLE V

The total authorized shares of the corporation shall be fifty thousand (50,000) common shares with a par value of One Dollar (\$1.00) each.

The shares of this corporation may be issued for cash, services, or property, upon such conditions and terms as may be determined by the Board of Directors, who shall have full power and authority to fix the value of the property or services for which shares may be issued and whose valuations shall be conclusive, and the shares so issued shall be fully paid and nonassessable.

The Board of Directors may from time to time cause the corporation to purchase its own shares to the extent of the unreserved and unrestricted earned and capital surplus of the corporation.

#### ARTICLE VI

The affairs of the corporation shall be conducted by a Board of Directors, the number of which shall be determined at the annual meeting of the shareholders in the manner specified in the By-Laws of the corporation. Directors shall be elected at the annual meeting of the shareholders to be held at such time as may be provided in the By-Laws of the corporation and such Directors shall serve until their successors are elected and qualified. The following person shall comprise the initial Board of Directors, who shall serve until his successor is elected and qualified:

Jerry Moyes  
2200 S. 75<sup>th</sup> Avenue  
Phoenix, Arizona 85043

#### ARTICLE VII

The private property of the shareholders, directors, and officers of this corporation shall be forever exempt from corporate debts and liabilities.

To the fullest extent permitted by Title 10 of the Arizona Revised Statutes as the same exists or may hereafter be amended, no director shall be liable to this Corporation or its

stockholders for monetary damages for breach of fiduciary duty as a director.

No repeal or modification of the foregoing paragraph by the stockholders of this Corporation shall adversely affect any right or protection of a director existing at the time of such repeal or modification.

#### ARTICLE VIII

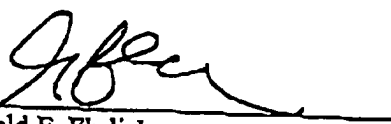
The corporation shall indemnify any person who incurs expenses by reason of the fact he or she is or may be an officer, director or agent of the Corporation. This indemnification shall be mandatory in all circumstances in which indemnification is permitted by law

#### ARTICLE IX

Gerald F. Ehrlich, with offices at 4001 North Third Street, Suite 400, Phoenix, Arizona, is hereby appointed the initial statutory agent of the corporation. The Board of Directors of this corporation may revoke this appointment of agent at any time and shall have power to fill any vacancy in such position.

IN WITNESS WHEREOF, the incorporator has hereunto set his hand this 23<sup>rd</sup> day of

February, 2004.

  
Gerald F. Ehrlich